

1997 LEGISLATIVE ENACTMENTS

TO: Local Officials

FROM: Joseph J. Chessey, Jr., Deputy Commissioner
Division of Local Services

DATE: February 1998

SUBJECT: Summary of 1997 Municipal Finance Law Changes

To keep you informed of legislative developments during the year, the Division of Local Services publishes on a periodic basis a **BULLETIN** summarizing any new laws enacted that affect municipal budgets and local tax assessment, administration and collection. Each issue contains a cumulative summary of session laws enacted to that time and indicates whether the Division has issued or will issue any further implementation guidelines.

Attached is the **1997 LEGISLATIVE BULLETIN**. It includes any legislative changes affecting municipal finance found in Chapters 1 - 240 of the Acts of 1997.

Copies of these new laws can be obtained from the State Bookstore located in Room 116 of the State House.

1997 LEGISLATIVE ENACTMENTS

Ch. 10 FY97 SUPPLEMENTAL BUDGET

An Act Making Appropriations for the Fiscal Year 1997 to Provide for Supplementing Certain Existing Appropriations and for Certain other Activities and Projects.

Effective May 12, 1997.

§26 Police Career Incentive Program. Requires that \$2,439,061 of the amount appropriated for police career incentive in FY97 be expended for the costs of the police career incentive program attributable to FY96 but not reimbursed from the FY96 budget. Also limits the Commonwealth's financial obligations under that program for FY96 to the additional amount made available.

Ch. 17 COST OF LIVING ADJUSTMENTS FOR RETIREES

An Act Relative to the Annual Cost of Living Adjustments for Retirees.

Effective September 4, 1997.

Changes generally the manner of providing cost of living adjustments (COLAs)

Amends G.L. Ch. 32 §102 to provide cost of living adjustments (COLAs) only for those in the state and teacher retirement systems. The Public Employee Retirement Administration Commission (PERAC) must submit a report to the legislature each January on any increase in the United States consumer price index (CPI) and whether that computation requires a COLA for retired state employees and teachers up to the percentage increase or 3%, whichever is less. Legislative action is still required to grant any COLA. Funding for any increases must come from the state and teacher retirement systems' investment income accounts.

Future local COLAs will no longer be governed by state legislative action, nor funded by the Commonwealth. Instead, upon acceptance of a new section 103 of G.L. Ch. 32, a COLA may be paid to retirees of other systems if approved by the local retirement board only. Acceptance is by the system's retirement board and the legislative body of the local governmental unit, and cannot be revoked. Funding for any increases must come from the local retirement system investment income account, but may require adjustments of the system's funding schedule by which local contributions are determined. A new COLA funding schedule must be prepared by PERAC, and any unfunded liability must be reduced to zero as of June 30, 2028, or some other time as may be allowed by PERAC.

In addition, the maximum COLA under G.L. Ch. 32 §102 (state and teacher retirement systems) and §103 (other retirement systems if accepted) will now be 3% of the pension or the first \$12,000 of the pension. Previously, the base was \$9,000, which means the maximum amount increases by up to one-third.

The legislation also delays the implementation of the early intervention program for disabled employees, established by G.L. Ch. 32 §5B, to January 1, 1998 after a study and evaluation report to be filed on or before October 1, 1997 by PERAC in consultation with the Massachusetts Municipal Association, state and teacher retirement boards and the association of retirement boards. These plans were part of the 1996 disability retirement reform act (Chapter 306 of the Acts of 1996) as a means of limiting retirement systems' liability for disability benefits. **See Ch. 240 below for amendment extending date further to July 1, 1998.**

Ch. 43

FY98 STATE BUDGET

An Act Making Appropriations for the Fiscal Year 1998 for the Maintenance of the Departments, Boards, Commissions, Institutions and Certain Activities of the Commonwealth, for Interest, Sinking Fund and Serial Bond Requirements and for Certain Permanent Improvements.

Effective July 1, 1997, but sections not related to appropriations and subject to referendum cannot take effect for at least 90 days after the act became law, *i.e.*, until October 8, 1997.

§6 Advance Local Aid. Authorizes the State Treasurer to advance payments of

that demonstrates an emergency cash shortfall, as certified by the Commissioner of Revenue and approved by the Secretary of Administration and Finance. **Informational Guideline Release (IGR) No. 97-101 issued July 1997**

§61 Recording of Appellate Tax Board Proceedings. Amends G.L. Ch. 58A §10 to permit electronic recording of Appellate Tax Board proceedings.

§68 Net School Spending Carry Forward. Amends G.L. Ch. 70 §11 to eliminate the penalties for school districts that spend at least 95% of their net school spending requirements in each fiscal year. Prior to this change any district with any carry-forward for two consecutive years was penalized. Carry-forward amounts may be spent for school purposes in the following year without being reappropriated by the appropriating body. Chapter 70 aid may still be reduced to districts that fail to spend the sum of any carry-forward amount, plus 95% of their current year's net school spending requirement.

§§71 and 72 Payment Obligation When Special Education Student Moves. Amends G.L. Ch. 71B §5 concerning which community pays for special education costs for day or residential placements when a student moves between communities. Previously, if the child moved into a new community on or after July first, the school committee for the sending community had to cover the costs for the remainder of the current year. Now, if the child moves into a new community on or after April first, the sending community must not only cover the costs for the remainder of the current year after April first, but must also cover the subsequent year's costs if the move occurs between April first and July first. This change is intended to alleviate budgetary problems that can occur when special needs pupils move in after the budget has been set, but before the start of the next fiscal year.

§150 Semiannual Preliminary Tax Bills. Makes permanent the provisions of G.L. Ch. 59 §23D authorizing communities using the semiannual payment system to issue preliminary tax bills with the prior written approval of the Commissioner of Revenue. Those provisions had been scheduled to expire at the end of FY98. **IGR No. 97-206 issued July 1997.**

§168 School Debt. Continues the provision in the FY97 state budget that allows municipalities and regional school districts with school building assistance (SBAB) priority projects to roll over their temporary borrowing for the projects for up to five years without paying down principal. It also lets municipalities and districts extend the total term of borrowing for such school projects by the length of time they had temporary debt outstanding. **See IGR No. 96-102 issued August 1996.**

§169 Retirees Health Insurance as Net School Spending For FY98, the costs of health insurance for retired teachers will be included as part of net school spending only in those districts where the costs were included as net school spending in FY94.

§182 Education Reform Waivers. Permits cities, towns and regional school

contributions to schools under the education reform act. Municipalities may seek adjustments if (1) non-recurring revenues were used to support FY97 operating budgets and those revenues are not available in FY98, (2) they have extraordinary non-school related expenses in FY98, or (3) their FY98 municipal revenue growth factor is 1.5 times the statewide average and is deemed to be excessive. Regional school districts that (1) used non-recurring revenues in FY97 that are unavailable for FY98, or (2) received regional incentive aid in FY95 must seek waivers if a majority of the selectmen in a town, the city council in a Plan E city or the mayor in all other cities in a majority of the member municipalities requests them. Requests for waivers by municipalities may be made by the selectmen in town, the city council in a Plan E city or the mayor in all other cities. If a regional school budget has already been approved by the members and a waiver is granted of any member's minimum required local contribution to the district, the use of that waiver must be approved by the selectmen, the city council in a Plan E city or the mayor in all other cities of a majority of the member municipalities. Regional school district waivers for regional incentive aid will be determined by the Department of Education. The other waiver programs will be administered by the Department of Revenue. **IGR No. 97-301 issued July 1997.**

§184 Minimum School Aid. Establishes the minimum amount of school aid to be distributed to each city, town or regional school district under G.L. Ch. 70 for FY98 at seventy-five dollars per pupil.

§198 Criminal Justice Training Council Costs. Continues the \$1800 fee charged to municipalities for each police recruit trained by the Criminal Justice Training Council. The fee is deducted from the community's local aid payments. The municipality is then authorized to recover the fee from the recruit's wages in eighteen monthly installments, or as otherwise negotiated.

§218 Wetlands Protection Fees. Allows the local portion of wetlands protection fees established by G.L. Ch. 131 §40 to be spent by the conservation commission without appropriation. Any expenditures must be for the administration or enforcement of the wetlands protection act and must be approved in writing by the mayor, city manager in Plan E cities, the selectmen or town manager in towns adopting a town manager form of government. Previously, the fees were reserved for appropriation by the local appropriating body for such expenditures. **IGR No. 98-101 issued February 1998.**

§222 Sewer Rate Relief. Continues program to mitigate sewer rate increases in the Massachusetts Water Resources Authority service area and elsewhere due to debt service costs for water pollution abatement and wastewater treatment projects. The amount appropriated for FY98 is \$50.7 million. Eligible debt issues are those issued after January 1, 1990, with a term over five years. All funds are to be distributed by March 31, 1998 under guidelines developed by the Division of Local Services in consultation with the Department of Environmental Protection. **BULLETIN issued August 7, 1997.**

An Act Relative to Charter Schools.

Effective October 9, 1997.

Amends G.L. Ch. 71, §89, which established charter schools, to establish Horace Mann charter schools. Unlike other charter schools which are chartered by the state (Commonwealth charter schools), the charter for a Horace Mann school must be approved by the local school committee and the local collective bargaining agent.

In addition, the act increases the number of charter schools allowed statewide from 25 to 50. Thirteen of these charters are reserved for the newly created Horace Mann charter schools for the next three years. After that, five of the slots may be given to Commonwealth charter schools. The cap of five charter schools in Boston and Springfield and two in any other city or town was also removed. The total number of students that may attend charter schools was also increased from 0.75% to 2% of total students attending public schools statewide.

The formula used to calculate transportation assessments for charter schools has been changed. Previously, these assessments were calculated based on the average cost per pupil of the sending district. Under this legislation, the district school committee is responsible for providing transportation to district students attending a charter school located in the district, but only if it is provided to students in the same program or grade in the district. No transportation assessments will be charged to communities that send students to another district to attend a charter school, though the student may be eligible for a state school choice transportation reimbursement under G.L. Ch. 76 §12B. **See Ch. 176 below which delays the effective date of these transportation changes to FY99.**

The amount of tuition any school district must pay to charter schools in any year will now be capped at 6% of net school spending requirement. However, in those districts where charter tuitions paid in FY97 exceeded 5% of net school spending, the amount of tuition may increase by an additional 3%. The provisions defining how tuition is paid from a school district to a charter school were amended to reflect the current practice of deducting the tuition from the chapter 70 school aid distributions for the local or regional school district the student would have otherwise attended.

In cases where a charter school student previously attended a private or parochial school or was home schooled, the Commonwealth will assume the first year cost for that student and will not reduce the sending district's chapter 70 aid for that student's tuition in that fiscal year.

The state Board of Education is to adopt regulations for determining the average cost per student in calculating charter school tuition amounts. The goal is to arrive at an amount closer to actual cost than the current formula.

The act also amends the reimbursement to districts whose total charter school tuition is greater than the previous year. Beginning in FY99, the sending district

year following and 40% in the second year following. These amounts are subject to appropriation and are not to be part of the chapter 70 distribution.

Ch. 48

ABOLITION OF MIDDLESEX, HAMPDEN AND WORCESTER COUNTIES

An Act Abolishing Certain Counties and for the Payment by the Commonwealth of Certain Debts and Obligations of Middlesex County.

Effective July 11, 1997.

Abolishes Middlesex County, including the offices of the county commissioners and the county advisory board, effective immediately. Also abolishes Hampden and Worcester Counties (along with Middlesex, defined as "abolished counties") as of July 1, 1998, or earlier if the Commissioner of Revenue certifies that the particular county has failed to make a payment as due on a bond or note. The office of county treasurer in the abolished counties is not abolished until Dec. 31, 2002, however.

The legislation makes all valid debts, obligations, leases and contracts of Middlesex (and other abolished counties) those of the Commonwealth. All assets (including land, buildings, courthouses, registries of deeds, jails and houses of correction) and revenues (including the deeds excise under G.L. Ch. 64D) become the property of the Commonwealth, and the Commonwealth assumes all functions, duties and responsibilities of counties (including operation of the county jails and houses of correction, registry of deeds and courthouses). In addition, funds were appropriated to pay certain Middlesex County obligations, including those owed to vendors and to note and bond holders.

In order to recover the amounts expended for county debts and other liabilities, including the appropriation noted above and certain unfunded pensions, the Secretary of Administration and Finance must establish an amortization schedule to assess the member cities and towns for an amount equal to the county tax assessed for the fiscal year immediately prior to the abolition date, to be paid annually over a period of up to 25 years. Payments made pursuant to this amortization schedule are to be deposited in the local aid fund.

The registers of deeds and sheriffs of abolished counties, though employees of the Commonwealth, will remain elected officials with the registries and their employees transferred to the Office of the Secretary of State. Registry employees will continue to be governed by the terms of their respective collective bargaining agreements until they expire. Sheriff department employees are transferred to the Commonwealth and will also continue to be governed by their respective collective bargaining agreements until they expire.

County employees who move to the state (as their functions are taken over by

Insurance Commission under the state plan four months after the transfer. However, former county employees covered by collective bargaining agreements at the time of transfer will continue the group insurance benefits required by their agreements until the expiration date thereof. Retirees will have insurance coverage transferred to the state plan four months after the transfer of county functions to the state.

There are no provisions specifically dealing with the issue of municipal and district employees covered by the county group insurance plan, if any. The retirement rights of employees transferred to the employment of the Commonwealth are also preserved.

The Human Resources Division of Administration and Finance assumes the obligations of an abolished county with respect to health and welfare trust agreements under G.L. Ch. 32B §15 until the expiration of any collective bargaining agreement providing for such fund. Claims trust funds under G.L. Ch. 32B §3A are transferred to the Group Insurance Commission and proportionately to cities, towns and districts covered by the county plan, if any. Group insurance trust funds under G.L. Ch. 32B §8A are transferred to the group insurance commission trust fund under G.L. Ch. 32A §9 in their entirety.

The act establishes a special task force on the valuation of county assets and liabilities to consist of legislators, Secretary of Administration and Finance, State Auditor and Inspector General. The task force is provided with an appropriation of \$1 million to undertake a statewide audit of all county assets and liabilities for purposes of considering a general abolition of county government.

The two counties scheduled for abolition as of July 1, 1998 (Worcester and Hampden) are prohibited from entering into collective bargaining agreements applicable to registry, sheriff's or courthouse employees without approval of the Secretary of Administration and Finance. In addition, those counties may not dispose of assets except as provided in the act, and any leases of county property entered into after June 30, 1977 are binding on the Commonwealth only if approved by the Secretary of Administration and Finance.

Ch. 88

FY97 SUPPLEMENTAL BUDGET

An Act Making Appropriations for the Fiscal Year 1997 to Provide for Supplementing Certain Existing Appropriations and for Certain other Activities and Projects.

Effective July 1, 1997, but sections not related to appropriations and subject to referendum cannot take effect for at least 90 days after the act became law, *i.e.*, until November 27, 1997.

§§12 - 22 Veteran's Exemptions. Increases all veterans' exemptions under G.L. Ch. 59 §5 (22) (22A) (22B) (22C) (22D) and (22E) by \$75 beginning in FY98.

Communities will be reimbursed by the state for the additional \$75. **BULLETIN issued September 1997.**

§24 Legal Costs Challenging Determination of Underperforming Schools
Amends G.L. Ch. 70 §8 to disqualify from net school spending any legal costs incurred by a school district in challenging a determination that a school or the district is underperforming or chronically underperforming under G.L. Ch. 69 §1J or 1K, or in challenging any actions by the Department of Education or the Board of Education in connection with that determination.

Ch. 149 APPOINTIVE OFFICERS

An Act Authorizing Towns to Make Certain Elected Officers Appointed Officials.

Effective November 19, 1997.

Adds G.L. Ch. 41 §1B to establish a procedure for towns to convert any officer or board elected under G.L. Ch. 41 §1 to appointed officers without the need for special legislation. The new procedure does not apply to the board of selectmen or school committee, however. To convert a position, majority votes of those voting at an annual or special town meeting and at the annual town election are required. Separate town meeting and election ballot votes are required for each officer or board being converted. If a change is voted at special town meeting, the meeting must be held at least 60 days before the annual election for it to be placed before the electorate at that time. The language of the ballot question is also specified. Once the conversion is made, the incumbent continues to hold office until the expiration of the term for which the person was elected or the appointment of another person to the office, whichever is later. If the person vacates the position earlier, the selectmen appoint a replacement under G.L. Ch. 41 §11 or §40, whichever is applicable. The selectmen make all appointments under G.L. Ch. 41 §1B unless some other provision of law specifically applies. **BULLETIN issued December 1997.**

Ch. 164 ELECTRIC UTILITY DEREGULATION

An Act Relative to Restructuring the Electric Utility Industry in the Commonwealth, Regulating the Provision of Electricity and other Service, and Promoting Enhanced Consumer Protections Therein.

Effective November 25, 1997.

Provides for the restructuring and deregulation of electric utilities in Massachusetts, including tax base protections for communities hosting electric generating facilities that are likely to suffer devaluation as a result of the restructuring.

Host communities are authorized to enter into binding agreements with generating companies for payments-in-lieu-of-taxes (PILOTs) that are negotiated in good faith and establish values or payments that approximate full and fair cash value tax assessments. For host communities that do not make such agreements, there is a general safety net where plants devalue from their FY97 assessed value. A newly added G.L. Ch. 59 §38H authorizes transition payments in addition to assessed taxes in such cases to ensure that the total revenues received by the community in FY98 to FY2000 from taxes and transition payments equals or approximates the taxes received in FY97. From FY2001 through FY2009, communities will receive transition payments based on the difference between the annual fair market values of the plants and their values as of January 1, 1996 (FY97). These transition payments are based upon a percentage (declining from 90% in FY2001 to 10% in FY2009) multiplied by the current year's commercial tax rate. Special provisions apply to the plants located in the towns of Plymouth and Somerset, and plants in some other host communities are governed by special legislation.

Amounts paid under binding PILOT agreements or as transition payments will be treated as if it they were taxes for Proposition 2½ and tax classification purposes. The amounts are subject to the community's levy limit, and commensurate PILOT or transition values will be used to calculate the community's levy ceiling and minimum residential factor.

The act also eliminates the property tax exemption for electric generating facilities of manufacturing corporations. These facilities will now generally be taxable. Still exempt, however, are (1) co-generation facilities of 30 megawatts or less capacity, (2) facilities owned by corporations classified as manufacturers on or before January 1, 1996, and (3) facilities entitled to a pollution control exemption under G.L. Ch. 59 §5(44). Companies that do not qualify for a manufacturing exemption may enter into a PILOT agreement with the host community, however, with an agreed upon full or partial tax exemption. The agreement must be the result of good faith negotiations and the equivalent of fair market value. These payments will also be treated as taxes for Proposition 2½ and tax classification purposes, *i.e.*, subject to the levy limit, with commensurate PILOT or transition values used to calculate the levy ceiling and minimum residential factor.

Additionally, communities with significantly devalued generating plants now qualify for designation as an economic target area (ETA) and an economic opportunity area (EOA) under G.L. Ch. 23A §§3D and 3E. This designation, if granted, allows such communities to provide economic development incentives in the form of property tax exemptions for certain projects, specifically, a 4 year special assessment exemption or a tax increment financing (TIF) exemption of up to 20 years.

Implementation guidelines on these new provisions will be issued later.

Effective November 26, 1997.

Amends the charter schools transportation reimbursement formula found in G.L. Ch. 71 §89(ff), as amended by Chapter 46 §2 of the Acts of 1997 above. For FY98, schools chartered on or before January 1, 1997, will continue to be reimbursed based on the average cost per pupil of the sending district. Reimbursement to schools chartered after that date will be limited to actual cost of transportation. In FY99, reimbursement to all charter schools will be limited to actual cost.

Ch. 228 TOWN ACCOUNTANTS

An Act Further Regulating the Position of Town Accountants.
Effective March 23, 1998.

Amends G.L. Ch. 41 §5 to permit a town accountant to be appointed for a term of five years at the discretion of the appointing authority. Otherwise, the appointment is still for three years.

Ch. 237 QUARTERLY TAX BILLS

An Act Relative to Quarterly Taxes in Cities and Towns.
Effective December 24, 1997.

Amends G.L. Ch. 59 §57C to authorize communities using the quarterly tax payment system to issue a third quarter preliminary tax bill in any year if they are unable to mail the actual tax bills on or before December 31. The prior written approval of the Commissioner of Revenue is required and the Commissioner may establish appropriate conditions for obtaining approval, including the submission of a pro forma tax rate recapitulation. The third quarter bill cannot exceed the amount of the first quarter payment and is due February 1, or thirty days after the date it was mailed, if later. **BULLETIN issued January 1998.**

The annual guidelines on quarterly tax bills issued this spring will be revised to reflect this legislation.

Ch. 240 EARLY INTERVENTION PROGRAMS

An Act Relative to the Implementation of Early Intervention Programs.
Effective December 31, 1997.

Further extends the deadline for local retirement boards to implement the early intervention plans required under the 1996 disability retirement reform act to July 1, 1998. A study and evaluation report is first to be completed by the Public Employee Retirement Administration Commission (PERAC) in consultation with the Massachusetts Municipal Association, state and teacher retirement boards and the association of retirement boards.

Last Act: Chapter 240 enacted on December 29, 1997 and signed on December 31, 1997.